

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-327V

(Filed: January 9, 2017)

UNPUBLISHED

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PHILIP POWER and APRIL POWER,
As the Parents and Natural Guardians
Of, C.P., a Minor,

Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

* * * * *

Dismissal; Measles-mumps-rubella
("MMR") Vaccine;
Encephalopathy; No Expert Report.

Mark Theodore Sadaka, Mark T. Sadaka, LLC, Englewood, NJ, for petitioner.
Camille Michelle Collett, U.S. Dept. of Justice, Washington, DC for respondent.

DECISION¹

Roth, Special Master:

On March 3, 2015, Philip Power and April Power ("petitioners") filed a petition for Vaccine Compensation in the National Vaccine Injury Compensation Program ["the Program"],²

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioner have 14 days to identify and move to delete medical or other information, that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, I agree that the identified material fits within the requirements of that provision, I will delete such material from public access.

² The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 *et seq.* (hereinafter

on behalf of their minor child, C.P. Petitioners alleged that shortly after receiving a measles-mumps-rubella (“MMR”) vaccine on April, 12, 2012, C.P. suffered encephalopathy and behavioral changes. The information in the record, however, does not show entitlement to an award under the Program. On January 6, 2017, petitioner filed a “motion to dismiss petition” requesting that the case be dismissed. ECF No. 46.

To receive compensation under the Program, a petitioner must prove either 1) that he suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to his vaccination, or 2) that he suffered an injury that was actually caused by a vaccine. *See* §§ 13(a)(1)(A) and 11(c)(1). An examination of the record did not uncover any evidence that C.P. suffered a “Table Injury.” Further, the record does not contain persuasive evidence indicating that C.P.’s alleged injury was vaccine-caused or in any way vaccine-related.

Under the Act, a petitioner may not be given a Program award based solely on the petitioner’s claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. § 13(a)(1). In this case, because there are insufficient medical records supporting petitioners’ claim, a medical opinion must be offered in support. Petitioners, however, have offered no such opinion that supports a finding of entitlement.

Accordingly, it is clear from the record in this case that petitioners have failed to demonstrate either that C.P. suffered a “Table Injury” or that his injuries were “actually caused” by a vaccination. **Thus, this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**

IT IS SO ORDERED.

s/Mindy Michaels Roth
Mindy Michaels Roth
Special Master

“Vaccine Act” or “the Act”). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.